

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DARIUS NIGEL SAULS,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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2:07-CV-0015

REPORT AND RECOMMENDATION TO DENY
MOTION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Came this day for consideration the March 22, 2007 Application to Proceed In Forma Pauperis on appeal filed by petitioner DARIUS NIGEL SAULS. Petitioner has submitted with his request, a letter to the Clerk indicating he had been granted pauper status on his initial habeas petition. Petitioner is incorrect. In fact, although petitioner filed an application to proceed *in forma pauperis* on his habeas petition, such motion was never granted because petitioner also filed an I-25 form representing that he had requested the \$5 filing fee be forwarded to the Court. Based upon such representation, the Court processed petitioner's case and Judgment entered March 5, 2007. Petitioner's filing fee has yet to be received.

Review of petitioner's current certified *in forma pauperis* data sheet discloses petitioner has received in the past six months, deposits totaling \$553.79. In fact, petitioner's account reflects a balance of \$510.64 in December of 2006, \$510.64 in January of 2007 and \$463.95 in

February of 2007. Petitioner does appear to have had sufficient funds to pay the filing fee necessary to proceed on appeal.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that petitioner's Application to Proceed In Forma Pauperis on Appeal be DENIED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 23rd day of March 2007.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be **filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the "entered" date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled "Objections to the

Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).